Standard Structural Steel Company *and* Shopmen's Local Union No. 832, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO. Cases 34–CA–5240 and 34–CA–5301

March 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge and amended charge filed in Case 34–CA–5240 by the Shopmen's Local Union No. 832, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, the Union, and upon a charge and amended charge filed by the Union in Case 34–CA–5301, the General Counsel of the National Labor Relations Board on August 16, 1991, issued an order consolidating cases, consolidated complaint and notice of hearing against Standard Structural Steel Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. By letter dated September 12, 1991, the Respondent was advised that if no answer to the consolidated complaint and notice of hearing was received by September 20, 1991, the Regional Office would seek summary judgment. On September 18, 1991, the Respondent filed its answer. However, by letter of February 21, 1992, the Respondent withdrew its answer. To date, the Respondent has failed to file another answer.

On March 2, 1992, the General Counsel filed a Motion for Summary Judgment. On March 4, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The consolidated complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the consolidated complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent filed an answer but withdrew that answer by letter of February 12, 1992. The Respondent's withdrawal of its answer has the same effect as a failure to file an answer.[1]

In the absence of good cause being shown for the failure to file an answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Connecticut corporation, with an office and place of business in Newington, Connecticut, has been engaged in the fabrication of structural steel. During the 12-month period ending July 31, 1991, the Respondent, in the course and conduct of its business operations, purchased and received at its facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Connecticut. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Recognition*

Since in or about 1974, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the unit set forth below, and since that date the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period April 1, 1989, to March 31, 1992.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed at the Respondent's Newington, Connecticut facility, excluding office clerical employees, draftsmen, engineering employees and watchmen and guards and supervisors as defined in the Act.

At all times material, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the unit for purposes of collective bargaining with respect to rates of pay,

[1] See *Academy of Scientific Hair Design*, 300 NLRB No. 92, slip op. at 2 (Nov. 23, 1990); A. J. Shirk Roofing Co., 300 NLRB No. 54, slip. op. at 2 (Oct. 19, 1990); and *Maislin Transport*, 274 NLRB 529 (1985).

wages, hours of employment, and other terms and conditions of employment.

B. *Refusal to Bargain*

Since on or about May 1, 1991, the Respondent has unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the agreement described above by failing to maintain the health insurance benefits of employees in the unit.

Since on or about May 20, 1991, the Respondent has unilaterally and without the consent of the Union failed to continue in full force and effect all of the terms and conditions of the agreement described above by failing to pay accrued vacation benefits to laid-off employees in the unit.

The terms and conditions of the agreement which the Respondent unilaterally and without the consent of the Union failed to continue in full force and effect are terms and conditions of employment of employees in the unit and are mandatory subjects of bargaining.

The Respondent engaged in the acts and conduct described above without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees in the unit with regard to such acts and conduct and the effects of such acts and conduct.

CONCLUSION OF LAW

By its failure to continue in full force and effect all the terms of the collective-bargaining agreement, by failing on and after May 1, 1991, to maintain the health insurance benefits of employees in the unit, and by failing on and after May 20, 1991, to pay accrued vacation benefits to laid-off employees in the unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to maintain all contractually required health insurance benefits and make all contractually required payments of accrued vacation benefits to laid-off employees.

The Respondent shall also make its employees whole for any losses attributable to its failure to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Standard Structural Steel Company, Newington, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Shopmen's Local Union No. 832, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO as the exclusive representative of its employees in the bargaining unit, by failing to maintain the employees' health insurance benefits and failing to pay laid-off employees accrued vacation benefits.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the exclusive bargaining representative of employees in the following appropriate unit:

> All production and maintenance employees employed at the Respondent's Newington, Connecticut facility, excluding office clerical employees, draftsmen, engineering employees and watchmen and guards and supervisors as defined in the Act.

(b) Maintain the employees' health insurance benefits and pay laid-off employees accrued vacation benefits pursuant to the terms of the collective-bargaining agreement.

(c) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to maintain employees' health insurance benefits and to pay accrued vacation pay to laid-off employees pursuant to the terms of the collective-bargaining agreements with the Union, as provided by the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Newington, Connecticut, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Shopmen's Local Union No. 832, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All production and maintenance employees employed at the Employer's Newington, Connecticut facility, excluding office clerical employees, draftsmen, engineering employees and watchmen and guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to continue in full force and effect all the terms and conditions of our collective-bargaining agreement with the Union by failing to maintain employees' health insurance benefits and failing to pay accrued vacation pay to laid-off employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect all the terms and conditions of the collective-bargaining agreement with the Union.

WE WILL maintain employees' health insurance benefits and pay laid-off employees accrued vacation pay pursuant to the collective-bargaining agreement and we will make our employees whole for our failure to adhere to the terms of that agreement.

STANDARD STRUCTURAL STEEL COMPANY